



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MOP - 177123

PRELIMINARY RECITALS

Pursuant to a petition filed on October 1, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Kenosha County Human Service Department regarding Medical Assistance (MA), a hearing was held on December 19, 2016, by telephone.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly seeks to recover an overissuance of MA benefits from the Petitioner in the amount of \$846.28 for the period of December 1, 2015 – May 31, 2016.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]
Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:
Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.

2. On May 23, 2016, the agency issued a Medical Assistance/BadgerCare/BadgerCare Plus Overpayment Notice to the Petitioner informing him that the agency intends to recover an overissuance of MA benefits in the amount of \$846.28 for the period of December 1, 2015 – May 31, 2016 for Petitioner's failure to report earned income. The notice further informed him of the right to appeal the agency determination by requesting a hearing with the DHA no later than July 7, 2016.
3. On June 2, 2016, the agency issued a Repayment Agreement to the Petitioner. He signed the agreement on June 22, 2016, agreeing to pay \$20/month to repay the MA overpayment.
4. On October 1, 2016, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

A hearing officer can only rule on the merits of a case if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action concerning MA must be filed within 45 days of the date of that action. Wis. Stats., § 49.45. A negative action can be an overpayment action.

The petitioner's appeal was filed 130 days after the date of the action. The Petitioner testified that he did not receive the notice right away because he had moved out of his mother's house. He did not dispute that he signed the repayment agreement, stating that he wanted to avoid legal action being taken against him. He does not dispute the employment dates or income counted by the agency in determining the overpayment. He stated that he never used the insurance because he assumed that he assumed it was automatically cancelled once he had insurance through his employer. He therefore feels he should not be responsible for the overpayment.

The Petitioner's appeal was clearly untimely and therefore I have no jurisdiction over the matter. As dicta, I note that the fact that the Petitioner did not use the insurance is not relevant. The overpayment is for the capitation payments made on behalf of the Petitioner to provide him with coverage. The Petitioner was under the duty to contact the agency if he no longer needed or wanted the insurance.

CONCLUSIONS OF LAW

The Petitioner's appeal was not timely filed.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

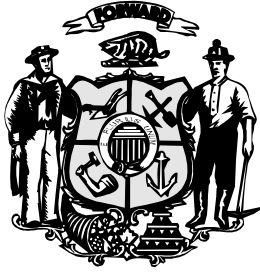
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 24th day of January, 2017

\s\s _____
Debra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



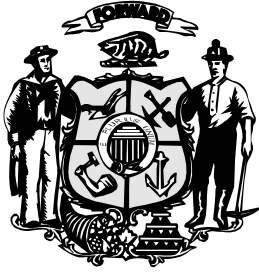
State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 24, 2017.

Kenosha County Human Service Department
Public Assistance Collection Unit
Division of Health Care Access and Accountability



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on July 25, 2017.

Kenosha County Human Service Department
Public Assistance Collection Unit
Division of Health Care Access and Accountability